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SUMMARY

Louisville Communications, LLC ("Petitioner") requested the reallocation of Channel 34 (NTSC) and 19 (DTV) from Campbellsville, Kentucky to Bardstown, Kentucky as Bardstown's first local television service. Bardstown is a rapidly growing community in need of a local television station and Campbellsville would retain service from a Class A television station. Independence Television Company ("Independence") challenges whether such an arrangement constitutes a preferential distribution of frequencies. Petitioner demonstrated in its comments that Congress and the Commission have recognized the importance of LPTV stations by granting certain of these stations primary status and imposing all of the obligations on them that full service stations have. As a result the decision has already been made that Class A stations are eligible for replacement for the removal of a full service station.

At the time of the filing of the Comments the Campbellsville station's Class A license application (Form 302-CA) had not been granted. However, three days later, on August 30, 2001, the license application was granted eliminating much of the opposition comments set forth by Independence. All that remains is for the Commission to formally recognize that Class A stations, which are a primary service with all of the obligations of a full service station, are replacement services under the Commission's criteria for change in community of license.

The Commission has already made a similar determination in the context of allowing FM stations to relocate when the community is left with only a daytime AM station or with only a NCE station. Since NCE stations are only required to provide a 60 dBu signal to 50% of the community and the Commission has not found that level of signal to be inadequate, Class A stations which can provide better signals should also be deemed adequate service.

Finally, the Campbellsville Class A station provides a large amount of locally directed programming for the residents of the community. Thus, the opponent's argument in that regard lacks merit. *

Accordingly, based on the designation of Class A as a primary service, the provision of a first local service to a rapidly growing community and the past case law of recognizing similar instances as constituting adequate replacement service, the Commission should approve the reallocation of NTSC Channel 34 and DTV Channel 19 to Bardstown as its first local television service.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054**

In the Matter of)	
)	
Amendment of Section 73.606(b))	MM Docket No. 01-148
Table of Allotments,)	RM-10141
Television Broadcast Stations,)	
and Amendment of Section 73.622(b))	
Table of Allotments)	
Digital Television Stations)	
(Campbellsville and Bardstown, Kentucky))	
To:		Chief, Allocations Branch
		Policy & Rules Division
		Mass Media Bureau

**REPLY TO COMMENTS OF
INDEPENDENCE TELEVISION COMPANY**

Louisville Communications, LLC (“Petitioner”), by its attorneys and pursuant to Section 1.415(c) of the Commission’s Rules, hereby replies to the Comments filed by Independence Television Company (“Independence”) to the Notice of Proposed Rule Making (“NPRM”)¹ in the above-captioned proceeding. In this proceeding, Petitioner, the licensee of WBKI-TV, Campbellsville, Kentucky (NTSC Channel 34) and permittee of unbuilt WBKI-DT, Campbellsville, Kentucky (DTV Channel 19) (collectively, the “Station”) has proposed that the community of license for the Station be changed from Campbellsville to Bardstown, Kentucky in order to provide Bardstown with its first local television service. Independence, whose television stations are licensed to Louisville, Kentucky and Salem, Indiana, protests. For the reasons that follow, Petitioner submits that Independence’s Comments have no merit and

¹ DA 01-1594, released (July 6, 2001). This pleading is filed one day after the due date as a result of the FCC’s closure on September 11, 2001.

therefore the Commission should promptly amend the TV Tables of Allotments for the Station by reallocating NTSC Channel 34 and DTV Channel 19 from Campbellsville to Bardstown, and modify the Station's authorizations accordingly.

Introduction

Petitioner's proposal to serve the rapidly growing community of Bardstown represents a preferential arrangement of allotments. In view of the recent grant of the license application for W04BP, Campbellsville, Kentucky, as a Class A primary television station,² the proposal meets all of the criteria for consideration of a community of license change. Specifically, Petitioner has shown that:

1. Bardstown is a bona fide "community" for purposes of the Commission's TV Tables of Allotments;
2. Under long standing Commission principles for assigning frequencies to communities throughout the United States, a community without a first local television service is to be preferred over a community that retains at least one local television transmission service; and
3. This principle strongly favors Petitioner's proposal because:
 - a. Bardstown is independent of Louisville and of Lexington, Kentucky; and
 - b. Campbellsville retains a local television transmission service through the operations of licensed Class A television station W04BP, Campbellsville, Kentucky.

Based on this showing, the Commission should proceed to adopt Petitioner's proposal by promptly issuing a Report and Order amending its NTSC and DTV Tables of Allotment as requested.

² On August 30, 2001, three days after Petitioner and Independence filed their respective Comments in this proceeding, the Commission granted Campbellsville University's application to change the status of W04BP from low power television to Class A television. See FCC File No. BLTVA-20010712AHS.

In contrast, Independence has submitted Comments that irresponsibly attack the bona fides of both the WBKI and the W04BP operations in an evident attempt to ward off competition. While leaping to wild and unsupported conclusions, Independence does not take any issue with Petitioner's showings that Bardstown is a "community" for allotment purposes, that the provision of first local service to Bardstown furthers an important Commission principle, and that Bardstown is independent of Louisville and Lexington. What the Commission is left with, then, is a lot of rhetoric and the same question left open in the NPRM as to whether a Class A Station should be deemed to be a local television transmission service for purposes of the FCC's allocation priorities and policies. Petitioner submits that the law and the facts not only warrant, but require the Commission to recognize that W04BP is a local Campbellsville television transmission service for allotment purposes in this case.

Discussion

The Commission will grant a proposal for a television station to change its community of license where the proposed allotment plan would result in a preferential arrangement of allotments based on the Commission's television allotment priorities and policies.³ Where a television station licensed to a community having more than one local television transmission service seeks to serve a community with no such local service, the proposal is favored under this

³ Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, Report and Order, 4 FCC Rcd 4870 at ¶ 25 (1989) ("Community of License R&O"), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Community of License MO&O"); see also 47 C.F.R. § 1.420(i). The television allotment priorities are: (1) to provide at least one television service to all parts of the United States, (2) to provide each community with at least one television broadcast station, (3) to provide a choice of at least two television services to all parts of the United States, (4) to provide each community with at least two television broadcast stations, and (5) to assign any remaining channels to communities based on population, geographic location and the number of television services available to the

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allotment scheme and will be granted by the Commission.⁴ This application of the Commission's priority scheme advances the goals of Section 307(b) and the public interest as it facilitates the deployment of television service to new communities that otherwise would go unserved.

The Commission stated in the NPRM that it was premature to consider a low power television station to be a local television transmission service for purposes of applying its allocation priorities.⁵ However, since the issuance of the NPRM, the Commission has granted W04BP Class A status. This action has provided the Commission with the opportunity to review its allocation policies in light of the grant of Class A status to the station.

Low power television stations differ from Class A television stations in that low power television stations are subject to displacement and are not required to maintain a specific operating schedule. Therefore, they may not provide a consistent source of programming to their communities of license. Moreover, low power television stations are not required to maintain a main studio or public inspection file or provide a specific signal strength over their communities of license, thereby potentially diminishing their ability to provide a local presence in the community of license. None of these differences, however, is in evidence with respect to W04BP.

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community from stations located in other communities. Sixth Report and Order, 41 FCC 148, 167 (1952).

⁴ This priority, along with the Commission's other allotment priorities, was adopted and is applied to advance the goals of Section 307(b) of the Communications Act of 1934, as amended ("Section 307(b)"). Community of License MO&O at ¶ 11. Section 307(b) requires that the Commission "make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." See 47 U.S.C. § 307(b).

As a licensed Class A Station, W04BP's operations cannot be overridden by full-service television stations, except in rare instances generally involving new NTSC proposals and DTV stations that have timely filed for maximization of their facilities.⁶ These categories of stations are finite in that their members are already in existence and cannot increase in number. Moreover, even if W04BP were to be displaced, it would have the opportunity to file for a new channel. Thus, there can be no doubt that W04BP is a permanent source of programming to the community.

Also as a Class A licensed station, W04BP must operate for a minimum of 18 hours per day.⁷ This requirement far exceeds the minimum operating schedule of two hours per day and 28 hours per week applicable to full power television stations.⁸ Thus, W04BP must provide significantly more programming to Campbellsville residents than a full power television station is required to provide which eliminates the expressed concern that such a station would not provide the community with a constant source of programming.

Pursuant to the Commission's rules applicable to the Class A service, W04BP must maintain a main studio and a public inspection file.⁹ Indeed, as Independence points out, the main studio of W04BP must be located within the station's own Grade B contour, not within 25 miles of its community of license or within the principle community contour of any other station

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⁵ NPRM at ¶ 4.

⁶ 47 U.S.C. § 336(f)(1)(D); In the Matter of Establishment of a Class A Television Service, Report and Order, 15 FCC Rcd 6355 at ¶ 44 ("Class A R&O").

⁷ 47 C.F.R. § 73.1740(a)(5). While the station has acknowledged that it has experienced operational difficulties, the Commission has acknowledged that these are of an unusual and extraordinary nature in its grant of Class A status to the station.

⁸ 47 C.F.R. § 73.1740(a)(2)(ii).

licensed to Campbellsville as permitted for full power television stations.¹⁰ Thus, again, W04BP must provide even more public access to its personnel and public file than a full power television station would be required to provide.

Despite all these factors, Independence attempts to cast doubt on the eligibility of a Class A station to be considered as an existing service. Independence claims that the coverage of such stations is inadequate.¹¹ The Commission has heard such claims before in similar cases. For example, the Commission has on several occasions permitted the removal of a community's sole fulltime service where a daytime only AM station remains, thus depriving the community of its only nighttime service. In Fredericksburg, Helotes and Castroville, Texas, 10 FCC Rcd 6580 (1995), recon. 11 FCC Rcd 22317 (1996), Fredericksburg (pop. 6,934) lost its only fulltime station in favor of Helotes (pop. 1,535). The Commission determined on reconsideration that such an arrangement was preferred in view of having made such findings consistently in past cases. In Pauls Valley, Oklahoma, et al., 13 FCC Rcd 13458 (1998), the Commission permitted the relocation of Station KPXI from Mt. Pleasant, Texas (pop. 12,291) to Overton, Texas (pop. 2,105) where Mt. Pleasant's sole remaining service was a daytime only station.

Another line of cases holds that a noncommercial educational station, can serve to prevent the loss of a community's only local service. In Cross Plains, Texas, et al., 15 FCC Rcd 5506 (2000), recon. dismissed, 15 FCC Rcd 8990 (2000), McKinney retained its only service

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⁹ Class A R&O at ¶¶ 24-25.

¹⁰ See 47 C.F.R. § 73.1125.

¹¹ W04BP's predicted Grade B contour encompasses more than half of Campbellsville. When the favorable terrain in the area is considered, however, it is clear that W04BP serves virtually all of Campbellsville and considerable areas surrounding it. See Exhibit A. Moreover, the station is

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from an NCE station. See also Everglades City, LaBelle, Estero and Key West, Florida, 15 FCC Rcd 9427 (2000) where LaBelle retained service only from an NCE station. These cases are significant because the community coverage rules for NCE stations are not as strict as those for commercial stations. NCE stations are not required to provide a city grade signal (70 dBu) to their communities of license. Rather all that is required is a 60 dBu signal to only 50% of the population within the community.

Taken together, these FM cases establish that in determining whether a community retains a local transmission service, the Commission does not undertake a detailed analysis of the coverage to the community offered by the remaining service. In fact, the coverage offered by a daytime AM or a NCE station may be significantly less than that offered by the departing station, but the Commission does not involve itself with the details of that coverage. The mere presence of the remaining service is sufficient to avoid depriving the community of its sole remaining local service.

In holding that a full power television station may change its community of license as long as a Class A station remains, the Commission need not fear, as Independence claims, that "hundreds of rural communities across the country" would face deprivation of their sole fulltime television service. That statement was just a scare tactic with no foundation. The conditions that are present in this case are sufficiently narrow that they are unlikely to reoccur in great numbers. Only when a community has exactly one television station and a Class A station, and the television station desires to change its community of license to a community that is unserved by any television station, including a Class A station, will this rule permit the relocation (assuming

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carried on the local cable system which enjoys a penetration rate of 69% in Taylor and Nelson

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other public interest factors are met). Our research indicates that at a maximum there are only 63 potential instances where only one television station is allocated to a community and one or more stations in that community have filed for Class A status. Indeed, TV stations seldom request a change in community of license. Even if such cases were to be filed, administrative convenience should not be a consideration when the public interest is at issue.

Finally, there can be no doubt that W04BP broadcasts a significant amount of programming that is responsive to the needs and interests of the entire Campbellsville community. The public affairs programs produced by the station include *Your Community*, a half hour biweekly talk show (aired Tuesdays at 6:30 pm and rebroadcast Thursdays at 6:00 pm) addressing topics of local interest, including Campbellsville government affairs, civic organizations, hospitals and health care, emergency services, and educational system. This program features a different guest in each episode who addresses an issue relating to one of these topics. That the licensee of W04BP is the University itself is of great significance with respect to this type of programming. It has as its faculty and staff the very local individuals with expertise that any station would seek out to address the issues raised in such programming. Another public affairs program aired on W04BP is *Campbellsville University Today*, a half hour biweekly talk show (aired Tuesdays at 6:00 pm and rebroadcast Thursdays at 6:30 pm) profiling people and departments of the University, an institution of enormous economic and civic importance in the community.

In addition, the station produces *What's Cooking ?*, a half hour biweekly program (aired Mondays at 6:00 pm and rebroadcast on Fridays 6:30 pm), featuring local community citizens

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Counties.

sharing their recipes and cooking strategies; *The Coach Ron Finley Show*, a half hour biweekly football coach's show (aired Thursdays at 6:00 pm and rebroadcast Fridays at 6:00 pm) featuring local football highlights; a local church program, as well as a variety of other programs that are of interest to the Campbellsville community. The value of the station's programming to the community is evident from the fact that it has achieved a feat that has eluded vast numbers of the nation's low power television stations, carriage on the local cable system, in the absence of a must-carry mandate.¹²

In the face of the law and these basic facts, Independence's Comments can only be seen as petty and unjustified attacks on Campbellsville University, W04BP and the Petitioner¹³ in an effort to protect its dominant position in the market. For example, Independence attempts to claim that community of Campbellsville does not value either W04BP or WBKI because two websites do not mention them.¹⁴ The referenced sites, however, do not purport to contain a comprehensive list of all media outlets as Independence insinuates, but rather list selected media outlets to which the site has active links. Neither W04BP nor WBKI have websites to which a link could be provided; accordingly, it is not surprising that they are not listed. It is of interest to note, and Independence has failed to do so, that one of these sites provides local TV listings, and both the listings for W04BP and WBKI are available.

Moreover, Independence assails the Class A Station for its time off the air. In so doing, Independence misses several important points that bear directly on the Commission's consideration of the Class A Station as a local television transmission service. First,

¹² See Declaration Under Oath of Carol Lafever attached hereto as Exhibit B.

¹³ Independence's attack on WBKI-TV is wholly lacking in specificity or support and thus is undeserving of a rebuttal.

¹⁴ See Comments of Independence Television Company at 11.

Campbellsville University voluntarily disclosed the station's technical difficulties at the risk of denial of its Class A application.¹⁵ Thus, the University demonstrates itself to be the type of licensee that the Commission can have confidence will continue to faithfully operate W04BP in the public interest for the benefit of the community of Campbellsville. Second, as noted above, W04BP is carried on the local cable system. Again, contrary to Independence's allegations that W04BP is not valued by the local community, it appears that it is valued very highly to have secured this carriage.

In the end, this case will decide, for the first time, whether a Class A television station should be deemed to be a local television transmission service for purposes of the Commission's allocation priorities and policies, that fact is unsurprising given that Class A status is relatively new. More importantly, the fact that a novel question may be raised does not, as Independence claims, indicate that a waiver is requested or needed for a Commission grant of the Petition. Nor should this issue deter the Commission from acting promptly, decisively, and in support of the proposal set forth in its NPRM.

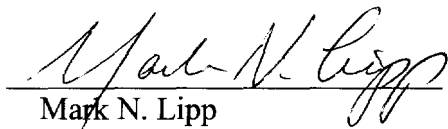
Conclusion

Based on the foregoing, Petitioner respectfully requests the Commission to turn aside the Comments of Independence and proceed promptly to issue a Report and Order amending its TV Tables of Allotments by realotting NTSC Channel 34 and DTV Channel 19 from Campbellsville to Bardstown, Kentucky and to modify the authorizations of the Station accordingly.

¹⁵ The Commission's grant of this application indicates that it recognizes that the problems which led to the station's cessation of operations were truly extraordinary and that the station continued to provide service to the public notwithstanding its technical difficulties by providing its signal to the cable system for distribution.

Respectfully submitted,

LOUISVILLE COMMUNICATIONS, LLC

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Its Counsel

September 12, 2001

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054**

In the Matter of)	
)	
Amendment of Section 73.606(b))	MM Docket No. 01-148
Table of Allotments,)	RM-10141
Television Broadcast Stations,)	
and Amendment of Section 73.622(b))	
Table of Allotments)	
Digital Television Stations)	
(Campbellsville and Bardstown, Kentucky))	

DECLARATION UNDER OATH

I, Carol LaFever, hereby declare under penalty of perjury as follows:

1. I am the Chief Operating Officer for Cascade Communications, LLC and its subsidiary, Louisville Communications, LLC, licensee of WBKI-TV.
2. I have reviewed the Comments filed by Independence Television Company ("ITC") in this proceeding relating to Class A television station W04BP, Campbellsville, Kentucky and, based upon information obtained in a meeting held by the declarant and Bill Bradley, General Manager of WBKI-TV, with Bryan Blair ("Blair"), General Manager of W04BP and other staff of the University of Campbellsville on Monday, September 10, 2001, the ITC Comments do not accurately depict the operations of the W04BP, as further set forth below.
3. Based upon the information provided by Blair in said meeting, W04BP has been a cornerstone of the broadcast program at the University of Campbellsville. The station provides students at the University with the opportunity to gain experience and training for careers in broadcasting and allows the University to provide programming of value to the community.
4. Blair informed declarant that W04BP broadcasts a variety of programs that are of interest to the Campbellsville community consisting of public affairs, religious programming, and general interest programming. University symposia, lectures and cultural events are also carried. The station airs approximately twelve hours per week of local programming during the academic year. Examples of the station's locally-produced programming include:

Your Community, a half hour biweekly talk show (aired Tuesdays at 6:30 pm and rebroadcast Thursdays at 6:00 pm) addressing topics of local interest, including Campbellsville government affairs, civic organizations, hospitals and health care,

emergency services, and educational system. This program features a different guest in each episode who addresses an issue relating to one of these topics.

Campbellsville University Today, a half hour biweekly talk show (aired Tuesdays at 6:00 pm and rebroadcast Thursdays at 6:30 pm) profiling people and departments of the University.

What's Cooking ?, a half hour biweekly program (aired Mondays at 6:00 pm and rebroadcast on Fridays 6:30 pm), featuring local community citizens sharing their recipes and cooking strategies.

The Coach Ron Finley Show, a half hour biweekly football coach's show (aired Thursdays at 6:00 pm and rebroadcast Fridays at 6:00 pm) featuring local football highlights.

5. Blair stated that the University plans to continue to operate W04BP and provide its students and the community with these benefits, and, to that end, the University has plans to construct a new building that will house the station's technical operations and provide teaching facilities for the broadcast program.

6. Blair also confirmed that W04BP is carried on the local cable system, which enjoys nearly universal penetration in the region, and has been since W04BP began operations. Accordingly, the station's programming is seen throughout the local area.

7. The foregoing is true and correct to the best of my personal knowledge and belief.

Respectfully submitted,


Carol LaFever

Dated: 9/12/01



**W04BP FCC COVERAGE CONTOURS
F:50/50 CURVES**

Wide Red Contour = 74 dBu
Wide Green Contour = 62 dBu

NOTE: 74 dBu IS THE SIGNAL LEVEL OF GRADE A COVERAGE AND THE 62 dBu SIGNAL LEVEL IS EQUIVALENT TO GRADE B COVERAGE.



W04BP SIGNAL COVERAGE

WIDE RED OVAL IS 62 dBu FCC CONTOUR.

GREEN AREA IS THE 62 dBu COVERAGE ACCORDING TO LONGLEY-RICE OET BULLETIN 69 METHODOLOGY.

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy and Bacon, do hereby certify that I have on this 12th day of September, 2001, caused to be served copies of the foregoing "Reply to Comments of Independence Television Company" on the following:

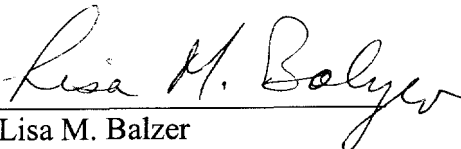
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Lisa M. Balzer